IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2007

CORAM

THE HONOURABLE MR. JUSTICE S.PALANIVELU

CRL.O.P.No.26916 of 2007

L.Shanmuga Sundara Perumal .. Petitioner

vs.

1.The Inspector of Police,
Team I, Central Crime Branch,
O/o: Commissioner of Police,
Egmore, Madras - 8.

2.Innvol Medical India Limited
rep. by its Managing Director
A.C.Karthikeyan .. Respondents

(R2 impleaded by order dated 19.09.2007
made in M.P.No.1 of 2007)

Criminal Original Petition filed under Section 482 Cr.P.C. to include the Directors of the accused company M/s.Innvol Medical India Ltd., in X Crime No.375/2007 as accused on the file of the respondent and investigate.

For petitioner : Mr.K.Seetha Ram

For respondents: Mr.A.Saravanan,
Govt. Advocate (Crl. Side) for R1
Mr.V.Ramakrishnan for R2

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O R D E R

The petitioner laid the complaint before the first respondent police which has been registered in Crime No.375 of 2007 on 20.07.2007 under Sections 406 and 420 I.P.C. In the said complaint, the name of the accused has been mentioned as M/s.Innovol Medical India Limited represented by its Managing Director A.C.Karthikeyan and other Board of Directors. Now the investigation is pending.

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2.Presently, the petitioner who is the complainant has come forward with this petition for a direction to the first respondent police to include the Directors of the accused company also as accused in this case and to proceed with further investigation. In the petition, he has mentioned five persons as Directors of the company.

3.Learned Government Advocate (Crl. Side) would vehemently oppose the request of the petitioner by stating that the investigating agency at the time of investigation by collecting the materials in the case has every discretion to include the accused persons who appear to have been involved in the offence and the law Courts cannot lay its hands on the power and discretion of the investigating agency to direct it to the effect that it should be proceeded in a particular direction. The said contention is legally tenable.

4.Learned counsel for the second respondent who has been impleaded subsequently in this petition would also contend in the same line by stating that the illuminating judgments of the Honourable Supreme Court would highlight the proposition of law that the power of the investigating agency should not be curtailed by the directions of the Courts. He made his arguments pressing the legal position enunciated by the Privy Council of India. He placed reliance upon the decision of Privy Council in Emperor Vs. Nazir Ahmad (1945 MWN Cr. 9) the enlightening judgment which throws light on the subject with regard to inherent powers of the High Court for issuing directions in this regard. Subsequently in State of West Bengal Vs. S.N.Basak (AIR 1963 SC 447), Full Bench of the Hon'ble Supreme Court had an occasion to discuss an identical issue and after following the dictum laid down by the Privy Council in the aforenoted decision has held that the High Court was in error in interfering with the powers of police in investigating into the offence. In this decision, the operative portion of the privy council has also been culled out, which portion goes thus:

> "As to the powers of the judiciary in regard to statutory right of the police to investigate, the Privy Council in King Emperor Vs. Khwaja Nazir Ahmad (cited supra) observed as follows:
>
> > "The functions of the judiciary and the police are complimentary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then. It has sometimes been thought that Section 561 A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the court

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already inherently possesses shall be preserved and is inserted, as Their Lordships think, lest it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of that Act."

With this interpretation, which has been put on the statutory duties and powers of the police and of the powers of the Court, we are in accord. The High Court was in error therefore in interfering with the powers of the police in investigating into the offence which was alleged in the information sent to the Officer-in-charge of the police station."

5.It is also his argument that the interference of the High Court under Section 482 Cr.P.C. to direct the police to investigate into cognizable offence is not at all permissible. In the following two decisions, Hon'ble Supreme Court has formulated the guidelines and the operative portions of the judgment are as follows:

(i) S.M.Datta Vs. State of Gujarat and Another (2001(7) SCC 659:

"In the event of commission of a cognizable offence and an offence standing disclosed in the first information report, interest of justice requires further investigation by the investigating agency. Investigation of an offence is within the exclusive domain of the police department and not the law courts. In the event of disclosure of an offence, it is a duty incumbent to investigate into the offence and bring the offender to book in order to serve the cause of justice and it is only thereafter the investigating officer submits the report to the court with a prayer to take cognizance of the offence under Section 190 Cr.P.C. and it is on submission of the report that the duty of the police ends subject however to the provisions as contained in Section 173(8) of the Code."

(ii) State of Karnataka and Another Vs. Pastor P.Raju (2006 6 SCC 728):

"Criminal Procedure Code1973 – Ss 482, 156 and 173 – Power under Section 482 – When can be exercised, restated – Interference under S.482 with statutory power of police to investigate in cognizable offence, held not permissible – Hence, where investigation in matter still under progress and no police report under S.173 Cr.P.C. submitted to Magistrate concerned, quashing of entire proceedings by High Court under S. 482, held, was not justified.

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Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence."

6.Guided by the principles laid down by the Privy Council and the Apex Court, it is to be held that the inherent powers conferred upon the High Courts under Section 482 Cr.P.C. cannot be exercised in the course of investigation by the investigating agency and no question of quashing the proceedings would also arise in this regard.

7.For the reasons stated above, the petition does not merit any consideration at all. In fine, this petition is dismissed.

mmi

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Inspector of Police,
Team I, Central Crime Branch,
O/o: Commissioner of Police,
Egmore, Madras - 8.

2.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.Seetha Ram,Advocate Sr.No.59590.

+1 cc to Mr.V.Ramakrishnan, Advocate Sr.No.59395.

MDR(CO)
dcp/5.10

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